



DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval
of Kentucky State Plan Amendments (SPA) 10-007

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Notice of Hearing

SUMMARY: This notice announces an administrative hearing to be held on June 27, 2013, at the CMS Atlanta Regional Office, Atlanta Federal Center, 61 Forsyth Street, South West, Atlanta, Georgia 30303-8909, to reconsider CMS' decision to disapprove Kentucky SPA 10-007.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT:

Benjamin Cohen, Presiding Officer
CMS
2520 Lord Baltimore Drive
Suite L
Baltimore, Maryland 21244
Telephone: (410) 786-3169

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS's decision to disapprove Kentucky SPA 10-007 which was submitted on September 30, 2010, and disapproved on April 2, 2013. The SPA proposed a payment methodology based on actual, incurred, costs for services provided by Community Mental Health Clinics (CMHCs).

At issue in the hearing is whether the proposed cost-based Medicaid payment methodology is consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act (Act) when Kentucky did not specifically document that, under the proposed methodology, non-Medicaid

costs would be excluded from the Medicaid payment calculation. Specifically, it appears that the methodology would rely on a cost reporting mechanism which results in over-allocation of both indirect and direct cost to Medicaid services. Specifically, for CMHCs that function within a larger parent organization, the state proposed an inappropriate transfer of cost from the parent organization to the CMHCs. Additionally, the state did not demonstrate that it had an acceptable method of allocating practitioner cost between reimbursable and non-reimbursable activities.

Section 1902(a)(30)(A) of the Act requires that states have methods and procedures in place to ensure payments are consistent with economy, efficiency, and quality of care. Because the proposed payment methodology is based on each provider's reconciled cost, CMS requested that Kentucky document the cost-finding and provider reporting mechanisms used to determine payment. This information would allow CMS to ensure that the proposed payment would be limited to amounts economic and efficient for covered Medicaid services, and were sufficient to ensure quality of care. Upon review of Kentucky's response, CMS determined that Kentucky was not able to document that its cost reporting mechanism properly allocated cost to Medicaid covered services. Specifically, CMS was concerned that Kentucky's methodology did not demonstrate the exclusion of costs incurred outside of these clinics for non-Medicaid activities and services. CMS worked with Kentucky on its cost reporting methodology over an extended period of time; however, CMS was not able to resolve questions surrounding the issue of including non-Medicaid costs. As a result, CMS could not conclude that Kentucky's proposed plan for payment was economic and efficient, or consistent with quality of care. In the absence of this specific information, CMS could not conclude that the requirements of section 1902(a)(30)(A) were satisfied.

Section 1116 of the Act and federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Kentucky announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Lawrence J. Kissner

Commissioner

Cabinet for Health and Family Services

Department for Medicaid Services

275 East Main Street, 6W-A

Frankfort, KY 40621

Dear Mr. Kissner:

I am responding to your request for reconsideration of the decision to disapprove the Kentucky State Plan Amendment (SPA) 10-007 which was submitted on September 30, 2010, and disapproved on April 2, 2013. The SPA proposed a payment methodology based on actual, incurred, costs for services provided by Community Mental Health Clinics (CMHCs).

I disapproved Kentucky SPA 10-007 because I could not conclude that it complied with section 1902(a)(30)(A) of the Social Security Act (the Act), which requires payments to be consistent with economy efficiency and quality of care. In order to meet this requirement, the Centers for Medicare & Medicaid Services (CMS) requested that Kentucky document the cost-finding and provider reporting mechanisms used to determine payment. Upon review of the commonwealth's response to CMS's formal Request for Additional Information (RAI), CMS determined that Kentucky had not sufficiently documented that its cost reporting mechanism properly allocated cost to Medicaid covered services by excluding non-Medicaid costs from the Medicaid payment calculation.

The CMS worked with Kentucky on its cost reporting methodology over an extended period of time; however, CMS was not able to resolve questions surrounding the issue of including non-Medicaid costs. As a result, CMS could not conclude that Kentucky's proposed plan for payment was economic and efficient, or consistent with quality of care. In the absence of this specific information, CMS could not conclude that the requirements of section 1902(a)(30)(A) of the Act were satisfied.

At issue in this appeal is whether the proposed cost-based Medicaid payment methodology is consistent with the requirements of section 1902(a)(30)(A) of the Act when Kentucky did not

specifically document that, under the proposed methodology, non-Medicaid costs would be excluded from the Medicaid payment calculation. Specifically, it appears that the methodology would rely on a cost reporting mechanism which results in over-allocation of both indirect and direct cost to Medicaid services. Specifically, for CHMCs that function within a larger central office unit, the state proposed an inappropriate transfer of cost from the larger central office unit to the CHMCs. Additionally, the state did not demonstrate that it had an acceptable method of allocating practitioner cost between reimbursable and non-reimbursable activities.

I am scheduling a hearing on your request for reconsideration to be held on June 27, 2013, at the CMS Atlanta Regional Office, Atlanta Federal Center, 61 Forsyth Street, South West, Atlanta, Georgia 30303-8909.

If this date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner

Acting Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)
(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance
Program.)

Dated: April 29, 2013.

Marilyn Tavenner

Acting Administrator

Centers for Medicare & Medicaid Services

[FR Doc. 2013-10695 Filed 05/03/2013 at 8:45 am; Publication Date: 05/06/2013]